

**GENERAL TERMS AND CONDITIONS**  
**APPLICABLE TO SUPPLY, SERVICES AND WORKS CONTRACTS**  
**WITH THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE**

**March 2016**

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## Part I: General Provisions

### ARTICLE 1 – COMPLIANCE

The Contractor must comply with the minimum requirements provided for in the Contract, in particular the tender specifications and other annexes. This includes compliance with applicable environmental, social and labour law obligations established by Union law, national legislation, collective agreements or the applicable international social and environmental conventions listed in Annex X of Directive 2014/24/EU <sup>1</sup>.

### ARTICLE 2 – PRICES

- 2.1 The Office concludes contracts and effects payments in euro.
- 2.2 Save as otherwise expressly provided in the Special Conditions, where applicable, the contract prices are firm and non-revisable.

### ARTICLE 3 – SEVERABILITY

Each provision of this Contract is severable and distinct from the others. If a provision is or becomes illegal, invalid or unenforceable to any extent, it must be severed from the remainder of the Contract. This does not affect the legality, validity or enforceability of any other provisions of the Contract, which continue in full force and effect. The illegal, invalid or unenforceable provision must be replaced by a legal, valid and enforceable substitute provision which corresponds as closely as possible with the actual intent of the parties under the illegal, invalid or unenforceable provision. The replacement of such a provision must be made in accordance with Article 14. The Contract must be interpreted as if it had contained the substitute provision as from its entry into force.

### ARTICLE 4 – DEFINITIONS

For the purpose of this Contract, the following definitions apply:

- **‘Conflict of interest’**: a situation where the impartial and objective exercise of the functions of a financial actor or other person of the Office involved in budget implementation and management is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the Contractor or any third party related to the subject matter of the Contract;
- **‘Contract’** means a direct or framework contract for supplies or services or works, as specified in the title of the Contract;

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<sup>1</sup> OJ L 94 of 28.03.2014, p. 65

- **‘Creator’**: means any natural person who contributes to the production of the result;
- **‘e-PRIOR’**: service-oriented communication platform that provides a series of web services and allows the exchange of standardised electronic messages and documents between the parties. This is done either through web services, with a machine-to-machine (system-to-system) connection between the parties’ back office systems (EDI messages), or through a web application (the Supplier Portal). The Platform may be used to exchange electronic documents (e-documents) such as electronic requests for services, electronic specific contracts, and electronic acceptance of services or electronic invoices between the parties. Technical specifications (i.e. the interface control document), details on access and user manuals are available at the following website: [http://ec.europa.eu/dgs/informatics/supplier\\_portal/documentation/documentation\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm)
- **‘Force majeure’**: any unforeseeable, exceptional situation or event beyond the control of the parties that prevents either of them from fulfilling any of their obligations under the Contract. The situation or event must not be attributable to error or negligence on the part of the parties or on the part of the subcontractors and must prove to be inevitable despite their exercising due diligence. Defaults of service, defects in equipment or material or delays in making them available, labour disputes, strikes and financial difficulties may not be invoked as force majeure, unless they stem directly from a relevant case of force majeure;
- **‘Formal notification’** (or ‘formally notify’): form of communication between the parties made in writing by mail or email, which provides the sender with compelling evidence that the message was delivered to the specified recipient;
- **‘Fraud’**: any intentional act or omission affecting the Union’s financial interests relating to the use or presentation of false, incorrect or incomplete statements or documents or to non-disclosure of information in violation of a specific obligation;
- **‘Interface control document’**: the guideline document which lays down the technical specifications, message standards, security standards, checks of syntax and semantics, etc. to facilitate machine-to-machine (system-to-system) connection. This document is updated on a regular basis;
- **‘Irregularity’**: any infringement of a provision of Union law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the Union’s budget;
- **‘Notification’** (or ‘notify’): form of communication between the parties made in writing including by electronic means;
- **‘Personnel’**: persons employed directly or indirectly or contracted by the Contractor to implement the Contract;

- **‘Pre-existing material’**: any material, document, technology or know-how which exists prior to the Contractor using it for the production of a result in the implementation of the Contract;
- **‘Pre-existing right’**: any industrial and intellectual property right on pre-existing material; it may consist in a right of ownership, a licence right and/or right of use belonging to the Contractor, the creator, the contracting authority as well as to any other third parties;
- **‘Professional conflicting interest’**: a situation in which the Contractor’s previous or ongoing professional activities affect its capacity to implement the Contract or to perform a specific contract to an appropriate quality standard;
- **‘Purchase order form’**: a simplified form of specific or direct contract by which the contracting authority orders supplies, services and/or works;
- **‘Related person’ or ‘authorised representative’**: any person who has the power to represent the Contractor or to take decisions on its behalf;
- **‘Result’**: any intended outcome of the implementation of the Contract, whatever its form or nature, which is delivered and finally or partially approved by the Office. A result may be further defined in this Contract as a deliverable. A result may, in addition to materials produced by the Contractor or at its request, also include pre-existing materials;
- **‘Specific contract’**: a contract implementing the framework contract and specifying details of a supply, service and/or works to be delivered and/or provided;
- **‘Substantial error’**: any infringement of a contract provision resulting from an act or omission, which causes or might cause a loss to the Union’s budget;
- **‘Supplier Portal’**: the e-PRIOR portal, which allows the Contractor to exchange electronic business documents, such as invoices, through a graphical user interface; its main features can be found in the Supplier Portal overview document available on: [http://ec.europa.eu/dgs/informatics/supplier\\_portal/doc/um\\_supplier\\_portal\\_overview.pdf](http://ec.europa.eu/dgs/informatics/supplier_portal/doc/um_supplier_portal_overview.pdf)
- **‘Tasks’** refers to the delivery of supplies and/or the provision of services and/or works, as specified in the tender specifications.

## ARTICLE 5 – LEGAL PERSONALITY OF THE CONTRACTOR

- 5.1 Any change in the legal personality of the Contractor, whether due to a merger, takeover, acquisition or any other cause, must be communicated immediately in writing to the Office.
- 5.2 Where required by the Office, the Contractor must provide without unjustified delay a new third-party file form, duly completed and signed.

- 5.3 In the event of a joint tender submitted by a group of economic operators and where the group does not have legal personality or legal capacity, one member of the group is appointed as leader of the group.

## **ARTICLE 6 – APPLICABLE LAW AND SETTLEMENT OF DISPUTES**

- 6.1 The Contract is governed by Union law, complemented, where necessary, by Spanish law.
- 6.2 Any dispute between the parties resulting from the interpretation, application or validity of the Contract is brought before the courts of Alicante.

## **ARTICLE 7 – PERFORMANCE OF THE CONTRACT**

- 7.1 The Contractor must perform the Contract to the highest professional standards, in accordance with the state of the art in the industry and the provisions of the Contract, in particular the tender specifications and the terms of its tender.
- 7.2 The Contractor is solely responsible for obtaining any permit or licence required for performance of the Contract under the laws and regulations in force at the place where the tasks assigned to it are to be executed.
- 7.3 Without prejudice to Article 10, any reference made to the Contractor's personnel in the Contract relates exclusively to individuals involved in the performance of the Contract.
- 7.4 The Contractor must ensure that the personnel performing the Contract and any future replacement personnel possess the professional qualifications and experience required for the execution of the tasks assigned to them, as the case may be on the basis of the selection criteria set out in the tender specifications.
- 7.5 The Contractor and its personnel must neither represent the Office nor behave in any way that would give such an impression. The Contractor must inform third parties that it does not belong to the European public service.
- 7.6 The Contractor has sole responsibility for the personnel who execute the tasks assigned to them and exercises its authority over its personnel without interference by the Office. The Contractor must inform its personnel that:
- (a) the personnel executing the tasks assigned to the Contractor may not be given orders directly by the Office;
  - (b) the Office may not under any circumstances be considered to be the employer of the personnel referred to in point (a) and the said personnel must undertake not to invoke against the Office any right arising from the contractual relationship between the Office and the Contractor.
- 7.7 In the event of a disruption resulting from the action of one of the Contractor's personnel working on Office premises or in the event that the expertise of a member of the Contractor's personnel fails to correspond to the profile required by the Contract, the Contractor must replace him/her without delay. The Office has the right

to make a reasoned request for the replacement of any such personnel. The replacement personnel must have the necessary qualifications and be capable of performing the Contract under the same contractual conditions. The Contractor must bear the cost of replacing its personnel and is responsible for any delay in the execution of the tasks assigned to it resulting from the replacement of personnel.

In the event that the Contractor's personnel work on the Office's premises, the Contractor is required, at the Office's request, to replace immediately and without compensation any person considered by the Office to be *persona non grata*.

- 7.8 Should any unforeseen event, action or omission directly or indirectly hamper execution of the tasks, either partially or totally, the Contractor must immediately and on its own initiative record it and report it to the Office. The report must include a description of the problem and an indication of the date on which it started and of the remedial action taken by the Contractor to ensure full compliance with its obligations under the Contract. In such an event the Contractor must give priority to solving the problem rather than to determining liability.
- 7.9 Should the Contractor fail to perform its obligations under the Contract, the Office may – without prejudice to its right to terminate the Contract or purchase order form or specific contract – reduce or recover payments in proportion to the scale of the unperformed obligations. In addition, the Office may claim compensation or impose liquidated damages provided for in Article 17.

## ARTICLE 8 – MEANS OF COMMUNICATION

- 8.1 Any communication relating to the Contract or to its performance must:
- (a) be made in writing in paper or electronic format in the language of the Contract;
  - (b) bear the Contract number and, if applicable, the specific contract or purchase order form number;
  - (c) be made using the relevant communication details set out in Article 1.8 of the Special Conditions, where applicable; and
  - (d) be sent by mail, email or, for the documents specified, where applicable, in the Special Conditions, via e-PRIOR.

Any communication is deemed to have been made when it is received by the receiving party unless otherwise provided for in the Contract.

- 8.2 Electronic communication is deemed to have been received by the parties on the day of dispatch of that communication provided it is sent to the addressees listed in Article 1.8 of the Special Conditions, where applicable. The sending party must be able to prove the date of dispatch. Without prejudice to the preceding, if the sending party receives a message of non-delivery to or of absence of the addressee, it must make every effort to ensure the actual receipt of such communication by the other party. In such a case, the sending party is not held in breach of its obligation to send such communication within a specified deadline.

Electronic communication must be confirmed by an original signed paper version of that communication if requested by any of the parties, provided that this request is submitted without unjustified delay. The sender must send the original signed paper version without unjustified delay.

The parties agree that any communication made by email has full legal effect and is admissible as evidence in judicial proceedings.

8.3 Mail sent using the postal services is deemed to have been received by the Office on the date on which it is registered by the Department responsible referred to, where applicable, in Article 1.8 of the Special Conditions.

8.4 Any formal notification must be made by registered mail with return receipt or equivalent, or by equivalent electronic means. Formal notifications are considered to have been received by the receiving party on the date of receipt indicated in the proof received by the sending party that the message was delivered to the specified recipient.

#### 8.5 **Submission of e-documents via e-PRIOR**

The ordering and invoicing documents are foreseen to be exchanged between the contracting parties via electronic means. At the request of the Office, the use of such applications will become mandatory during the execution of the Contract and will replace the current ordering and invoicing procedures which are based on postal, email or FAX exchanges.

The ordering procedure may cover the steps going from the Request for Offers to the signature of specific contracts or purchase orders. The electronic documents are exchanged using the e-PRIOR platform, either via a system-to-system connection (web services) or through a web application (the Supplier Portal).

The links below further detail the technical and functional characteristics of the e-PRIOR platform. The Supplier Portal can be found at:

[http://ec.europa.eu/dgs/informatics/supplier\\_portal/index\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/index_en.htm)

The related documentation can be found at:

[http://ec.europa.eu/dgs/informatics/supplier\\_portal/documentation/documentation\\_en.htm](http://ec.europa.eu/dgs/informatics/supplier_portal/documentation/documentation_en.htm)

Contractors should be aware of the fact that other applications currently under development may be implemented on a voluntary basis during the Contract execution.

The above links might change over time during the lifetime of the Contract and therefore should be only indicative of where to find the information at the time this Contract is signed.

8.6 The parties agree that any e-document, including related attachments exchanged via e-PRIOR:

- (a) is considered as equivalent to a paper document;
- (b) is deemed to be the original of the document;
- (c) is legally binding on the parties once an e-PRIOR authorised person has performed the 'sign' action in e-PRIOR and has full legal effect; and



- (d) constitutes evidence of the information contained in it and is admissible as evidence in judicial proceedings.
- 8.7 In case of submission of documents via e-PRIOR, the following conditions apply:
- (a) The Office takes the necessary measures to implement and maintain electronic systems that enable the Supplier Portal to be used effectively.
  - (b) In case of system-to-system connection (web services), the parties take the measures necessary on their side to implement and maintain electronic systems that enable the system-to-system connection to be used effectively. The Contractor must take the necessary technical measures to set up a system-to-system connection and at its own cost.
  - (c) If communication via the Supplier Portal or via the web services is hindered by factors beyond the control of one party, it must notify the other immediately and the parties must take the necessary measures to restore this communication.
  - (d) If it is impossible to restore the communication within two working days, one party must notify the other that alternative means of communication specified in Article 8.1 will be used until the Supplier Portal or the system-to-system connection is restored.
  - (e) If an e-document is dispatched through the Supplier Portal, it is deemed to have been legally issued or sent when the Contractor is able to successfully submit the e-document without any error messages. The generated PDF and XML document for the e-document are considered as a proof of receipt by the Office.
  - (f) If an e-document is dispatched using a direct connection (web services), the e-document is deemed to have been legally issued or sent when its status is 'received' as defined in the interface control document.
  - (g) When using the Supplier Portal, the Contractor can download the PDF or XML message for each e-document for one year after submission. After this period, copies of the e-documents are no longer available for automatic download from the Supplier Portal.

## **ARTICLE 9 – LIABILITY**

- 9.1 The Contractor is solely responsible for complying with any legal obligations incumbent on it. In particular, where the Contract is to be executed on Spanish territory, the Contractor must ensure compliance with the relevant provisions of Spanish legislation concerning health and safety in the workplace and the rights of workers.
- 9.2 The Office is not liable for any loss or damage caused or sustained by the Contractor, including any damage caused by the Contractor to third parties, during or as a consequence of performance of the Contract, except in the event of wilful misconduct or gross negligence on the part of the Office.

- 9.3 The Contractor is liable for any loss or damage caused to the Office during or as a consequence of implementation of the Contract, including in the event of subcontracting, but only up to an amount not exceeding three times the total amount of the Contract or, where applicable, of the relevant purchase order form or specific contract.
- Nevertheless, if the damage or loss is caused by the gross negligence or wilful misconduct of the Contractor or of its personnel or subcontractors, the Contractor has unlimited liability for the amount of the damage or loss.
- 9.4 The Contractor must indemnify and hold the Office harmless for all damages and costs incurred due to any claim. The Contractor must provide compensation in the event of any action, claim or proceeding brought against the Office by a third party as a result of damage caused by the Contractor during the performance of the Contract.
- 9.5 In the event of any action brought by a third party against the Office in connection with the performance of the Contract, including any alleged breach of intellectual property rights, the Contractor must assist the Office in the legal proceedings, including by intervening in support of the Office upon request. If the Office's liability towards the third party is established and that such liability is caused by the Contractor during or as a consequence of the implementation of the Contract, Article 9.3 applies.
- 9.6 The Contractor must take out an insurance policy against risks and damage or loss relating to the performance of the Contract if required by the relevant applicable legislation. It must take out supplementary insurance as reasonably required by standard practice in the industry. Evidence of insurance coverage must be provided to the Office should it so request.
- 9.7 If the Contractor is composed of two or more economic operators who submitted a joint tender, they are all jointly and severally liable to the Office for the implementation of the Contract.

## **ARTICLE 10 – CONFLICT OF INTERESTS AND PROFESSIONAL CONFLICTING INTERESTS**

- 10.1 The Contractor must take all necessary measures to prevent any situation of conflict of interests or professional conflicting interest.

Any situation constituting or likely to lead to a conflict of interests or a professional conflicting interest during the performance of the Contract must be notified to the Office in writing without delay. The Contractor must immediately take all the necessary steps to rectify the situation.

The Office may do any of the following:

- (a) verify that the Contractor's action is appropriate;
- (b) require the Contractor to take further action within a specified deadline;
- (c) decide not to award a specific contract to the Contractor.

- 10.2 The Contractor declares that it has not granted and will not grant, has not sought and will not seek, has not attempted and will not attempt to obtain, and has not accepted and will not accept, any advantage, financial or in kind, to or from any party whatsoever, where such advantage constitutes an illegal practice or involves corruption, either directly or indirectly, inasmuch as it is an incentive or reward relating to the performance of the Contract.
- 10.3 The Contractor must pass on all the relevant obligations in writing to its personnel and to any natural person with the power to represent it or take decisions on its behalf and ensure that it is not placed in a situation which could give rise to a conflict of interests or a professional conflicting interest. The Contractor must also pass on all the relevant obligations in writing to third parties involved in the performance of the Contract, including subcontractors. A copy of the instructions given and the undertakings made in this respect must be provided to the Office, should it so request.
- 10.4 Without prejudice to Article 7 the Contractor must replace, immediately and without compensation from the Office, any member of its personnel placed in a situation which could give rise to a conflict of interests or a professional conflicting interest.

## **ARTICLE 11– CONFIDENTIALITY**

- 11.1 The Office and the Contractor must treat with confidentiality any information and documents, in any form, disclosed in writing or orally in relation to the performance of the Contract and identified in writing as confidential.
- 11.2 Each party must:
- (a) not use confidential information or documents for any purpose other than fulfilling its obligations under the Contract without prior written agreement of the other party;
  - (b) ensure the protection of such confidential information or documents with the same level of protection it uses to protect its own confidential information or documents, and in any case with due diligence;
  - (c) not disclose directly or indirectly confidential information or documents to third parties without the prior written agreement of the other party.
- 11.3 The confidentiality obligations set out in this Article are binding on the Office and on the Contractor during the performance of the Contract and for as long as the information or documents remain confidential, with a minimum confidentiality period of five years starting from the date of the payment of the balance, unless:
- (a) the disclosing party agrees to release the receiving party from the confidentiality obligation earlier;
  - (b) the confidential information or document becomes public through other means than in breach of the confidentiality obligation, through disclosure by the party bound by that obligation;
  - (c) the disclosure of the confidential information or document is required by law.

- 11.4 The Contractor must obtain from any natural person with the power to represent it or take decisions on its behalf, as well as from third parties involved in the performance of the Contract, including subcontractors, a commitment that they will comply with the confidentiality obligation set out in this Article. A document providing evidence of this commitment must be provided to the Office, should it so request.
- 11.5 Any distribution or publication of information relating to the Contract by the Contractor requires prior written authorisation from the Office. It must state that the opinions expressed are those of the Contractor only and do not represent the Office's official position.
- 11.6 The use of information obtained by the Contractor in the course of the Contract for purposes other than its performance is forbidden, unless the Office has specifically given prior written authorisation to the contrary.

## **ARTICLE 12 – PROCESSING OF PERSONAL DATA**

- 12.1 Any personal data contained in the Contract must be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Such data is processed by the Office only for the purposes of:
- (a) performance, management and monitoring of the Contract without prejudice to its possible transmission to the bodies charged with monitoring or inspections task in application of Union law;
  - (b) registration in the Early Detection and Exclusion System (EDES) if the Contractor is in one of the situations mentioned in Article 106 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union as amended. For more information, see the Privacy Statement on [http://ec.europa.eu/budget/explained/management/protecting/protect\\_en.cfm#BDCE](http://ec.europa.eu/budget/explained/management/protecting/protect_en.cfm#BDCE).
- 12.2 The Contractor has the right to access its personal data and to rectify any such data. The Contractor should address any queries concerning the processing of its personal data to the Data Controller responsible for the Contract ([Procurement.DataProtectionController@euipo.europa.eu](mailto:Procurement.DataProtectionController@euipo.europa.eu)).
- The Contractor has also right of recourse at any time to the European Data Protection Supervisor.
- 12.3 Where the Contract requires the processing of personal data by the Contractor, the Contractor may act only under the supervision of the Office, in particular with regard to the purposes of the processing, the categories of data which may be processed, the recipients of the data and the means by which the data subject may exercise his/her rights.
- 12.4 The Contractor grants its personnel access to the data to the extent strictly necessary for the performance, management and monitoring of the Contract.

- 12.5 The Contractor must adopt appropriate technical and organisational security measures having regard to the risks inherent in the processing and to the nature of the personal data concerned in order to:
- (a) prevent any unauthorised person from gaining access to computer systems processing personal data, and especially:
    - (i) unauthorised reading, copying, alteration or removal of storage media;
    - (ii) unauthorised data input, as well as any unauthorised disclosure, alteration or erasure of stored personal data;
    - (iii) unauthorised use of data-processing systems by means of data transmission facilities;
  - (b) ensure that authorised users of a data-processing system can access only the personal data to which their access right refers;
  - (c) record which personal data have been communicated, when and to whom;
  - (d) ensure that personal data being processed on behalf of third parties can be processed only in the manner prescribed by the Office;
  - (e) ensure that, during communication of personal data and transport of storage media, the data cannot be read, copied or erased without authorisation;
  - (f) design its organisational structure in such a way that it meets data protection requirements.

Such measures must be agreed between the Contractor and the Office.

## **ARTICLE 13 – SUBCONTRACTING**

- 13.1 The Contractor may not subcontract without prior written authorisation from the Office nor cause the Contract to be performed *de facto* by third parties.
- 13.2 Even where the Office authorises the Contractor to subcontract to third parties, the Contractor nevertheless remains bound by its contractual obligations and is solely responsible for the proper performance of the Contract.
- 13.3 The Contractor must make sure that the subcontract does not affect rights and guarantees to which the Office is entitled by virtue of the Contract, notably Article 11, Article 22 and Article 28.
- 13.4 The Office may request the Contractor to replace a subcontractor found to be in a situation provided for in points (e) and (f) of Article 19.1.1.

## **ARTICLE 14 – AMENDMENTS**

- 14.1 Any amendment to the Contract or, where applicable, to the purchase order form or specific contract, must be made in writing and signed by the contracting parties before fulfilment of any new contractual obligations.

- 14.2 The amendment may not have the purpose or the effect of making changes to the Contract or, where applicable, to purchase order forms or specific contracts, which might alter the initial conditions of the procurement procedure or result in unequal treatment of economic operators or contractors.
- 14.3 A purchase order form or specific contract must not be deemed to constitute an amendment to a framework contract.

## **ARTICLE 15 – ASSIGNMENT**

- 15.1 The Contractor must not assign any of the rights and obligations arising from the Contract, including claims for payments or factoring, without prior written authorisation from the Office. In such cases, the Contractor must provide the Office with the identity of the intended assignee.
- 15.2 In the absence of such authorisation, or in the event of failure to observe the terms thereof, the assignment of rights or obligations by the Contractor is not enforceable against and have no effect on the Office.

## **ARTICLE 16 – FORCE MAJEURE**

- 16.1 The definition of force majeure is provided in Article 4 of the present General Conditions.
- 16.2 If either party is faced with force majeure, it must formally notify the other party without delay, stating the nature, likely duration and foreseeable effects.
- 16.3 The party faced with force majeure is not to be held in breach of its contractual obligations if it has been prevented from fulfilling them by force majeure. Where the Contractor is unable to fulfil its contractual obligations owing to force majeure, it has the right to remuneration only for the tasks actually executed.
- 16.4 The parties must take all the necessary measures to limit any damage due to force majeure.

## **ARTICLE 17 – LIQUIDATED DAMAGES AND REDUCTIONS IN PRICE**

- 17.1 The Office may impose liquidated damages and/or reduction in price should the Contractor fail to complete its contractual obligations, also with regard to the required quality level, according to the tender specifications.
- 17.2 Should the Contractor fail to perform its contractual obligations within the time limits set by the Contract or, where applicable, by the relevant purchase order form or specific contract, then, without prejudice to the Contractor's actual or potential liability or to the Office's right to terminate the Contract or relevant purchase order form or specific contract, the Office may impose liquidated damages for each and every calendar day of delay according to the following formula:

$$0.3 \times (V/d)$$

where:

- V* is the amount specified in the Special Conditions or, where applicable, the price of the relevant purchase or deliverable or result;
- d* is the duration specified in the Special Conditions or, where applicable, the duration specified in the relevant purchase order form or specific contract or, failing that, the period between the date specified in Article 1.2.1 of the Special Conditions, where applicable, and the date of delivery or performance specified in the relevant purchase order form or specific contract, expressed in calendar days.

Liquidated damages may be imposed together with a reduction in price under the conditions of the present Article.

- 17.3 The Office must formally notify the Contractor of its intention to apply liquidated damages and the corresponding calculated amount.

The Contractor may submit arguments against this decision within 30 calendar days of receipt of the formal notification. In the absence of a reaction on its part or of written withdrawal by the Office within 30 calendar days of the receipt of such arguments, the decision imposing the liquidated damages becomes enforceable.

If the Contractor submits observations, the Office, taking into account the relevant observations, must notify the Contractor:

- (a) of the withdrawal of its intention to apply liquidated damages; or
- (b) of its final decision to apply liquidated damages and the corresponding amount.

- 17.4 The parties expressly acknowledge and agree that any sums payable under Articles 17.1 to 17.3 are in the nature of liquidated damages and not penalties, and represent a reasonable estimate of fair compensation for the damage and losses incurred due to failure to fulfil obligations within the applicable time limits.

- 17.5 If the Contractor fails to provide the service, supplies or works, in accordance with the Contract or a specific contract or purchase order form ('unperformed obligations') or if it fails to provide the service or supplies or execute the works in accordance with the expected quality levels specified in the tender specifications ('low quality delivery'), the Office may reduce or recover payments proportionally to the seriousness of the unperformed obligations or low quality delivery. This includes in particular cases where the Office cannot approve a result, report or deliverable as defined in Article 1.5 of the Special Conditions, where applicable, after the Contractor has submitted the required additional information, correction or new version.

A reduction in price may be imposed together with liquidated damages under the conditions of the present Article.

- 17.6 The Office must formally notify the Contractor of its intention to reduce payment and the corresponding calculated amount.

The Contractor has 30 calendar days following the date of receipt to submit observations. Failing that, the decision becomes enforceable the day after the time limit for submitting observations has elapsed.

If the Contractor submits observations, the Office, taking into account the relevant observations, must notify the Contractor:

- (a) of the withdrawal of its intention to reduce payment; or
- (b) of its final decision to reduce payment and the corresponding amount.

17.7 Any claim for liquidated damages and/or reduction of payment does not affect the Contractor's actual or potential liability or the Office's rights under Article 19.

## **ARTICLE 18 – SUSPENSION**

### **18.1 Suspension by the Contractor**

The Contractor may suspend the performance of the Contract or, where applicable, purchase order form or specific contract, or any part thereof if a case of force majeure makes such performance impossible or excessively difficult. The Contractor must notify the Office immediately about the suspension, giving all the necessary reasons and details and the envisaged date for resuming the performance of the Contract or purchase order form or specific contract.

Once the circumstances allow resuming performance, the Contractor must notify the Office immediately, unless the Office has already terminated the Contract, purchase order form or specific contract.

### **18.2 Suspension by the Office**

The Office may suspend the performance of the Contract or, where applicable, pending purchase order forms or specific contracts, or any part thereof:

- (a) if the award procedure for the Contract, purchase order form or specific contract, or if the performance of the Contract proves to have been subject to substantial errors, irregularities or fraud;
- (b) in order to verify whether presumed substantial errors, irregularities or fraud have actually occurred.

The Office must formally notify the Contractor of the suspension. Suspension takes effect on the date of formal notification, or at a later date provided in the formal notification. The Office must notify the Contractor as soon as possible to resume performance of the Contract or, where applicable, pending purchase order forms or specific contracts, or inform the Contractor that it is proceeding with the termination of the Contract under Article 19.1.1.d or Article 19.1.1.i.

The Contractor is not entitled to claim compensation on account of suspension of any part of the Contract or, where applicable, purchase order forms or specific contracts, or of part thereof.



## ARTICLE 19 - TERMINATION

### 19.1 Grounds for termination

1. The Office may terminate the Contract and, where applicable, a purchase order form or specific contract, in the following circumstances:

- (a) if a change to the Contractor's legal, financial, technical, organisational or ownership situation is likely to affect substantially the performance of the Contract or, where applicable, purchase order form or specific contract, or substantially modify the conditions under which the Contract was initially awarded;
- (b) if execution of the tasks under the Contract or, where applicable, under a pending purchase order form or specific contract, has not actually started within fifteen calendar days of the date foreseen, and the new date proposed, if any, is considered unacceptable by the Office, taking into account Article 14.2;
- (c) if the Contractor does not perform the Contract or, where applicable, purchase order form or specific contract, as established in the tender specifications or request for service, supplies or works, or fails to fulfil another substantial contractual obligation, or repeatedly refuses to sign specific contracts; termination of three or more purchase order forms or specific contracts in these circumstances also constitutes ground for termination of the framework contract;
- (d) in the event of force majeure notified in accordance with Article 16 or if the performance of the Contract or, where applicable, purchase order form or specific contract, has been suspended by the Contractor as a result of force majeure, notified in accordance with Article 18, where either:
  - i. resuming performance is impossible; or
  - ii. the necessary ensuing amendments to the Contract, purchase order form or specific contract would mean that the tender specifications are no longer fulfilled, or result in unequal treatment of economic operators or contractors;
- (e) if the Contractor or any person that assumes unlimited liability for the debts of the Contractor is in one of the situations provided for in points (a) and (b) of Article 106(1) of the Financial Regulation<sup>2</sup>;
- (f) if the Contractor or any person who has the power to represent it or to take decisions on its behalf is subject to any of the situations provided for in points (c) to (f) of Article 106(1) or to Article 106(2) of the Financial Regulation;
- (g) if the Contractor does not comply with applicable obligations under environmental, social and labour law established by Union law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to Directive 2014/24/EU;
- (h) if the Contractor is in a situation that could constitute a conflict of interest or a professional conflicting interest as referred to in Article 10;

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<sup>2</sup> Regulation (EU, EURATOM) No 966/2012 on the financial rules applicable to the general budget of the Union, as amended <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012R0966>

- (i) if the procedure for awarding the Contract or the implementation of the Contract proves to have been subject to substantial errors, irregularities or fraud, including in the event of submission of false information;
- (j) if the Contractor is unable, through its own fault, to obtain any permit or licence required for performance of the Contract;
- (k) in the case of a framework contract, if the needs of the Office change and it no longer requires new supplies and/or services under the Contract; in such cases ongoing specific contracts remain unaffected;
- (l) in the case of a multiple framework contract with reopening of competition, when due to the termination of the Contract with one or more of the Contractors, there is no longer the minimum required level of competition.

2. The Contractor may terminate the Contract and, where applicable, a purchase order form or specific contract, in the following circumstances:

- (a) it has evidence that the Office has committed substantial errors, irregularities or fraud in the procedure for awarding the Contract or the implementation of the Contract, specific contract or purchase order form;
- (b) the Office fails to comply with its obligations, in particular the obligation to provide the information needed for the Contractor to implement the Contract or to perform a specific contract or purchase order form as provided for in the tender specifications.

## **19.2 Procedure for termination**

When a party intends to terminate the Contract, purchase order form or specific contract, it must formally notify the other party of its intention specifying the grounds thereof. The other party has 30 calendar days following the date of receipt to submit observations, including the measures it has taken to continue fulfilling its contractual obligations. Failing that, the decision to terminate becomes enforceable the day after the time limit for submitting observations has elapsed.

If the other party submits observations, the party intending to terminate must formally notify it either of the withdrawal of its intention to terminate or of its final decision to terminate.

In the cases referred to in points (a), (b), (c), (e), (g), (h), (j), (k) and (l) of Article 19.1.1 and in Article 19.1.2, the formal notification must specify the date on which the termination takes effect. In the cases referred to in points (d), (f), and (i) of Article 19.1.1, the termination takes effect on the day following the date on which notification of termination is received by the Contractor.

In addition, at the request of the Office and regardless of the grounds for termination, the Contractor must provide all necessary assistance, including information, documents and files, to allow the Office to complete, continue or transfer the tasks to a new contractor or internally, without interruption or adverse effect on the quality or continuity of the services, provision of goods, or execution of works. The parties may agree to draw up a transition plan detailing the Contractor's assistance unless such plan is already detailed in other contractual documents or in the tender specifications. The Contractor must provide such assistance at no additional cost, except if it can demonstrate that it requires substantial additional resources or means, in which case it must provide an estimate of the costs involved and the parties will negotiate an arrangement in good faith.

### **19.3 Effects of termination**

Without prejudice to any other measures provided for in the Contract, the Contractor is liable for damage incurred by the Office as a result of the termination of the Contract or a specific contract or purchase order form, including the cost of appointing another contractor to provide or complete the services, unless the damage was caused by the situation specified in Article 19.1.1(d), (k) or (l) or in Article 19.1.2. The Office may claim compensation for such damage, may refuse to make payments to the Contractor and may recover amounts already paid under the Contract.

The Contractor is not entitled to compensation for any loss resulting from the termination of the Contract or a specific contract or purchase order form, including loss of anticipated profits, unless the loss was caused by the situation specified in Article 19.1.2.

On receipt of the notification of termination, the Contractor must take all the appropriate measures to minimise costs, prevent damages, and cancel or reduce its commitments. The Contractor has 60 calendar days from the date of termination to draw up the documents required by the Special Conditions or purchase order forms or specific contracts for the tasks performed on the date of termination and produce the corresponding invoice, if necessary.

In the case of joint tenders, where the group does not have legal personality, the Office may terminate the Contract or a specific contract with each member of the group separately on the basis of points (e), (f) or (g) of Article 19.1.1, under the conditions set out in Article 14.2.

## **ARTICLE 20 – INVOICING AND PAYMENTS**

### **20.1 Date of payment**

Payments are deemed to have been made on the date when they are debited to the Office's account.

### **20.2 Electronic document exchange**

The ordering and invoicing documents are foreseen to be exchanged between the contracting parties via electronic means under the conditions set out in Articles 8.5, 8.6 and 8.7.

### **20.3 Costs of transfer**

The costs of the transfer are borne in the following way:

- (a) costs of dispatch charged by the Office's bank are borne by the Office,
- (b) cost of receipt charged by the bank of the Contractor are borne by the Contractor,
- (c) costs for repeated transfer caused by one of the parties are borne by the party causing repetition of the transfer.

#### **20.4 Address for submission of invoices**

Whenever invoices are communicated through postal exchange, they must be sent to the following address:

European Union Intellectual Property Office  
Accountancy  
Avenida de Europa, 4  
E-03008 Alicante  
SPAIN.

The Office is not liable for any delay in the payment of invoices sent to any other address.

Should the Office establish an electronic invoicing system, it reserves the right to require the Contractor to send its invoices electronically.

#### **20.5 Third-party file**

No payments may be made by the Office if the Contractor has not completed the third-party file form correctly.

The Contractor must inform the Office immediately of any changes to its tax and/or bank information and, where necessary, duly fill out and submit a new third-party file form to the Office.

The Office is not liable for any delay in the payment of invoices due to irregularities or errors in the third-party file of the Contractor.

#### **20.6 Invoices and Value Added Tax**

Invoices must contain the Contractor's identification information, the amount in euro and the date, as well as the reference number of the Contract and, where applicable, purchase order form or specific contract.

The Contractor recognises that the Office is, as a rule, exempt from all taxes and duties, including value-added tax (VAT).

The Office is a body of the European Union which has legal personality and which enjoys the fiscal benefits granted to the European Institutions by the Member States of the European Union pursuant to the provisions of Articles 3, 4 and 18 of the Protocol on the Privileges and Immunities of the European Union (n°7) annexed to the Treaty of Rome and which apply to the Office by virtue of Article 117 of Council Regulation (EC) n° 207/2009 of 26 February 2009 as amended.

With regard to Spain, the Office is exempt of VAT according to Article 151.1.a.b. of Directive 2006/112/CE within the limits and conditions established in the Seat Agreement between the Kingdom of Spain and the European Union, signed in Madrid on the 20/09/2011 and published in the "Boletín Oficial del Estado" of the 21/10/2011.

The Contractor must accordingly complete the necessary formalities with the relevant authorities to ensure that the supplies and services required for performance of the Contract are exempt from taxes and duties, including from VAT.

Invoices must indicate the place of taxation of the Contractor for value-added tax (VAT) purposes and must specify separately the amounts not including VAT and the amounts including VAT.

## **20.7 Pre-financing, performance and money retention guarantees**

1. Pre-financing guarantees cover the financial risks connected with payment of pre-financing. The pre-financing guarantee remains in force until the pre-financing is cleared against interim payments or payment of the balance. Where the payment of the balance takes the form of a debit note, the pre-financing guarantee remains in force for three months after the debit note is sent to the Contractor. The Office must release the guarantee within the following month.
2. Performance guarantees cover compliance with substantial contractual obligations until the Office has given its final approval for the service, supplies or works. The performance guarantee must not exceed 10 % of the total price of Contract or specific contract. The Office must release the guarantee partially or fully after provisional or final approval, as provided for in the Contract or specific contract.
3. Retention money guarantees cover full delivery of the service, supplies or works in accordance with the Contract or specific contract including during the contract liability period and until its final approval by the Office. It aims at ensuring that the Contractor remedies defects during the contract liability period. The retention money guarantee must not exceed 10 % of the total price of the Contract or specific contract and may be constituted by deductions from interim payments as and when they are made and/or by deduction from the final payment. The Office must release the guarantee after the expiry of the Contract liability period as provided for in the Contract or specific contract.

Subject to approval by the Office, the Contractor may request to replace the retention money guarantee by a financial guarantee referred to in Article 20.7.4.

The Office must not request a retention money guarantee for a Contract or specific contract where it has requested a performance guarantee.

4. Where a financial guarantee is required for the payment of pre-financing, or as performance guarantee, or as a replacement for a retention money guarantee, it must fulfill the following conditions:
  - (a) the financial guarantee is provided by a bank or an approved financial institution accepted by the Office or, at the request of the Contractor and with agreement of the Office, by a third party;
  - (b) the guarantor stands as first-call guarantor and does not require the Office to have recourse against the principal debtor (the Contractor).

The cost of providing such guarantee(s) is borne by the Contractor.

## **20.8 Interim payments and payment of the balance**

The Contractor submits an invoice for interim payment upon delivery of intermediary results, accompanied by a progress report or any other documents, as provided for in the Special Conditions or in the tender specifications or in the purchase order form or specific contract.

The Contractor submits an invoice for payment of the balance within 60 calendar days following the end of the period referred to in the Special Conditions, where applicable, accompanied by a final progress report or any other documents provided for in the Special Conditions or in the tender specifications or in the purchase order form or specific contract.

Upon receipt, the Office pays the amount due as interim or final payment within the periods specified in the Special Conditions, purchase order form or specific contract, provided the invoice and documents have been approved and without prejudice to Article 20.9. Approval of the invoice and documents does not imply recognition of the regularity or of the authenticity, completeness and correctness of the declarations and information they contain.

Payment of the balance may take the form of recovery.

## **20.9 Suspension of the time allowed for payment**

The Office may suspend the payment periods specified in the Special Conditions, purchase order form or specific contract, at any time by notifying the Contractor that its invoice cannot be processed.

The reasons the Office may cite for not being able to process an invoice are:

- a. because it does not comply with the Contract, purchase order form or specific contract;
- b. because the Contractor has not produced the appropriate documents or deliverables; or
- c. because the Office has observations on the documents or deliverables submitted with the invoice.

The Office must inform the Contractor in writing as soon as possible of any such suspension, giving the reasons for it.

Suspension takes effect from the date the notification is sent by the Office. The remaining payment period starts to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out. Where the suspension period exceeds two months, the Contractor may request the Office to justify the continued suspension.

Where the payment periods have been suspended following rejection of a document referred to in the second paragraph and the new document produced is also rejected, the Office reserves the right to terminate the Contract or, where applicable, the purchase order form or specific contract, in accordance with point (c) of Article 19.1.1.

## **20.10 Interest on late payment**

On expiry of the payment periods specified in the Special Conditions, purchase order form or specific contract, and without prejudice to Article 20.9, the Contractor is entitled to interest on late payment at the rate applied by the European Central Bank for its main refinancing operations in euro ("the reference rate") plus eight percentage points ("the margin"). The reference rate is the rate in force on the first day of the month in which the payment period ends, as published in the C series of the Official Journal of the European Union.

The suspension of payment periods in accordance with Article 20.9 may not be considered as a late payment.

Interest on late payment covers the period running from the calendar day following the due date for payment up to and including the day of actual payment as defined in Article 20.1.

However, when the calculated interest is lower than or equal to EUR 200, it is paid to the Contractor only upon written request submitted within two months of receiving late payment.

## **ARTICLE 21 - RECOVERY**

- 21.1 If an amount is to be recovered under the terms of the Contract, the Contractor must repay the Office the amount in question.

Before recovery, the Office must formally notify the Contractor of its intention to recover the amount it claims, specifying the amount due and the reasons for recovery and inviting the Contractor to make any observations within 30 calendar days of receipt.

If no observations have been submitted or if, despite the observations submitted, the Office decides to pursue the recovery procedure, it must confirm recovery by formally notifying a debit note to the Contractor, specifying the date of payment. The Contractor must pay in accordance with the provisions specified in the debit note.

- 21.2 If the obligation to pay the amount due is not honoured by the date set by the Office in the debit note, the amount due bears interest at the rate indicated in Article 20.10. Interest on late payments covers the period from the calendar day following the due date for payment, up to and including the calendar day on which the Office receives full payment of the amount owed.

Any partial payment must first be entered against charges and interest on late payment and then against the principal amount.

- 21.3 If payment has not been made by the due date, the Office may, after informing the Contractor in writing, recover the amounts due:

- a. by offsetting them against any amounts owed to the Contractor by the Union or by the European Atomic Energy Community;
- b. by calling in a financial guarantee if the Contractor has submitted one to the Office;
- c. by taking legal action.

- 21.4 If the Contract is signed by a group (joint tender), the group is jointly and severally liable under the conditions set out in Article 9.7. The Office first claims the full amount to the leader of the group.

If the leader does not pay by the due date and if the amount cannot be offset in accordance with Article 21.3(a), the Office may claim the full amount to any other member of the group by notifying the debit note already sent to the leader under Article 21.1.

## ARTICLE 22 – CHECKS AND AUDITS

- 22.1 The Office and the European Anti-Fraud Office may check or require an audit on the performance of the Contract. It may be carried out either directly by its own staff or by any other outside body authorised to do so on its behalf.

Such checks and audits may be initiated during the performance of the Contract and during a period of five years which starts running from the date of expiry of the Contract.

The audit procedure is deemed to be initiated on the date of receipt of the relevant letter sent by the Office. Audits are carried out on a confidential basis.

- 22.2 The Contractor must keep all original documents stored on any appropriate medium, including digitised originals when they are authorised by national law and under the conditions laid down therein, for a period of five years which starts running from the date expiry of the Contract.

- 22.3 The Contractor must allow the Office's staff and outside personnel authorised by the Office the appropriate right of access to sites and premises where the Contract is performed and to all the information, including information in electronic format, needed in order to conduct such checks and audits. The Contractor must ensure that the information is readily available at the moment of the check or audit and, if so requested, that information be handed over in an appropriate form.

- 22.4 On the basis of the findings made during the audit, a provisional report is drawn up. It must be sent to the Contractor, which shall have 30 calendar days following the date of receipt to submit observations. The final report must be sent to the Contractor within 60 calendar days following the expiry of that deadline.

On the basis of the final audit findings, the Office may recover all or part of the payments made and may take any other measure which it considers necessary.

- 22.5 By virtue of Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspection carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities and Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF), the European Anti-Fraud Office may carry out investigations, including on the spot checks and inspections, to establish whether there has been fraud, corruption or any other illegal activity under the Contract affecting the financial interests of the Union. Findings arising from an investigation may lead to criminal prosecution under national law.

The investigations may be carried out at any moment during contract implementation and up to five years after the payment of the balance of the Contract or the last specific contract or purchase order form issued under the Contract.

- 22.6 The Court of Auditors has the same rights as the Office, notably right of access, for the purpose of checks and audits.



## **Part II – Additional Provisions concerning the Performance of Supply Contracts**

### **ARTICLE 23 – PACKING, SHIPPING, CARRIAGE AND INSURANCE**

The packing, shipping, carriage and insurance of supplies is the responsibility of the Contractor.

The Contractor must complete or cause to be completed all the formalities involved in shipping, in particular those involved in exportation.

The Contractor must complete or cause to be completed all the formalities involved in importation or must provide all the documents required for the purpose, as required by the tender conditions.

### **ARTICLE 24 – PACKAGING**

24.1 The supplies must be packaged in strong boxes or crates or in any other way that ensures that the contents remain intact and prevents damage or deterioration. Packaging, pallets, etc., including contents, must not weigh more than 500 kg.

The maximum total volume for packed goods (where applicable, pallet included) must not exceed 1250 mm width and 1600 mm height.

24.2 Unless otherwise specified in the Special Conditions or in the tender specifications, the packing materials remain the property of the Office.

Unless otherwise specified in the Special Conditions or in the tender specifications, pallets are considered as one-way packaging and are not returned.

24.3 Each box must be clearly labelled with the following information:

- European Union Intellectual Property Office and address for delivery;
- name of Contractor;
- description of contents;
- date of delivery;
- reference number and date of the Contract and, where applicable, reference number of purchase order form or specific contract.

### **ARTICLE 25 – DELIVERY OF SUPPLIES**

#### **25.1 Time allowed for delivery**

The time allowed for delivery is a maximum of four weeks unless otherwise specified in the Special Conditions or the tender specifications.

## **25.2 Place of delivery**

The delivery of the supplies must be made at the goods delivery entrance of the Office's main seat, situated in Avenida de Europa, 4, Polígono Agua Amarga, 03008 Alicante, Spain. The place of delivery might also be any other building in the area of Alicante where the Office has premises.

The Office reserves the right to change the delivery address, giving sufficient notice. In such a case, the cost of carriage may be adjusted by mutual agreement.

## **25.3 Procedure for delivery**

The supplies must be unloaded by the Contractor in the goods delivery bay and transferred to the X-ray inspection equipment situated in the warehouse adjacent to the goods delivery bay. Once the inspection has been completed and the supplies have been sealed by the Office's security services, the Contractor must transfer them to the reception storeroom, indicated by Office staff or, where specified in the Special Conditions or, where applicable, purchase order form or specific contract, the Contractor must reload the supplies onto its vehicle, transport them to the Office building specified in the Special Conditions, purchase order form or specific contract, and unload them definitively in the appropriate goods delivery bay. All of the above actions must be carried out by the Contractor using its staff and equipment.

## **25.4 Date and time of delivery**

The Office must be notified in writing at least four working days in advance of the exact date of delivery. All deliveries must be made at the agreed place of delivery between 09:00h and 12:00h.

The Contractor bears all costs and risks involved in delivering the supplies to the place of delivery.

## **25.5 Consignment note**

Each delivery must be accompanied by a consignment note in duplicate, duly signed and dated by the Contractor or its carrier. The consignment note must give the Contract number and, where applicable, the purchase order form or specific contract number and particulars of the supplies delivered. Where applicable, a copy of the purchase order form, stamped by the Contractor, must be annexed to the consignment note. One copy of the consignment note must be countersigned by the Office and returned to the Contractor or to its carrier.

Signature of the consignment note by the Office is simply an acknowledgment of the fact that the supplies have been delivered and in no way implies conformity of the supplies with the Contract or, where applicable, purchase order form or specific contract.

# **ARTICLE 26 – CONFORMITY**

## **26.1 Certificate of conformity**

Conformity of the supplies delivered must be evidenced by the signature of a certificate to this effect by the Office no later than one month after the date of delivery, unless otherwise specified in the Special Conditions or in the tender specifications.

Conformity is declared only where the conditions laid down in the Contract and, where applicable, purchase order form or specific contract, are satisfied and the supplies conform to the tender specifications.

Where, for reasons attributable to the Contractor, the Office is unable to accept the supplies, the Contractor must be notified in writing.

#### **26.2 Conformity of the supplies delivered with the Contract**

- a) The supplies delivered by the Contractor to the Office must be in conformity in quantity, quality, price and packaging with the Contract and, where applicable, the relevant purchase order form or specific contract.
- b) The supplies delivered must:
  - (i) correspond to the description given in the tender specifications and possess the characteristics of the supplies provided by the Contractor to the Office as a sample or model;
  - (ii) be fit for any specific purpose required of them by the Office and made known to the Contractor at the time of conclusion of the Contract and accepted by the Contractor;
  - (iii) be fit for the purposes for which supplies of the same type are normally used;
  - (iv) demonstrate the quality and performance which are normal in supplies of the same type and which the Office can reasonably expect, given the nature of the supplies and taking into account any public statements on the specific characteristics of the supplies made by the Contractor, the producer or its representative, particularly in advertising or on labelling;
  - (v) be packaged according to the usual method for supplies of the same type or, failing this, in a way designed to preserve and protect them.

#### **26.3 Remedy**

- a) The Contractor is liable to the Office for any lack of conformity which exists at the time the supplies are verified.
- b) In case of lack of conformity, without prejudice to Article 17 regarding damages applicable to the total price of the supplies concerned, the Office is entitled:
  - (i) either to have the supplies brought into conformity, free of charge, by repair or replacement;
  - (ii) or to have an appropriate reduction made in the price.
- c) Any repair or replacement must be completed within a reasonable time and without any significant inconvenience to the Office, taking account of the nature of the supplies and the purpose for which they are required by the Office.
- d) The term 'free of charge' in paragraph b) refers to the costs incurred to bring the goods into conformity, particularly the cost of carriage, labour and materials.

#### **26.4 Assembly**

If required, the Contractor must assemble the supplies delivered within a period of one month unless otherwise specified in the Special Conditions or, where applicable, in the purchase order form or specific contract.

Any lack of conformity resulting from incorrect installation of the supplies delivered is deemed to be equivalent to lack of conformity of the supplies if installation forms part of the Contract and the supplies were installed by the Contractor or under its responsibility. This applies equally if the product was to be installed by the Office and was incorrectly installed owing to a shortcoming in the installation instructions.

#### **26.5 Services provided to supplies**

If required by the Special Conditions or the tender specifications, services related to supplies must be provided accordingly.

### **ARTICLE 27 – GUARANTEE**

- 27.1 The supplies must be guaranteed against all defects in manufacture or materials for two years from the date of delivery, unless provision for a longer period is made in the tender specifications.
- 27.2 The Contractor must guarantee that any permits and licences required for manufacturing and selling the supplies have been obtained.
- 27.3 The Contractor must replace at its own expense, within a reasonable time limit to be determined by agreement between the parties, any items which become damaged or defective in the course of normal use during the guarantee period.
- 27.4 The Contractor is responsible for any conformity defect which exists at the time of delivery, even if this defect does not appear until a later date.

The Contractor is also responsible for any conformity defect which occurs after delivery and is ascribable to non-compliance with his obligations, including failure to provide a guarantee that, for a certain period, supplies used for the purposes for which they are normally used or for a specific purpose will preserve their qualities or characteristics as specified.
- 27.5 If part of an item is replaced, the replacement part must be guaranteed under the same terms and conditions for a further period of the same duration as that specified above.
- 27.6 If a defect is found to originate in a systematic flaw in design, the Contractor must replace or modify all identical parts incorporated in the other supplies that are part of the Contract, or, where applicable, purchase order form or specific contract, even though they may not have been the cause of any incident. In this case, the guarantee period must be extended as stated above.

## **Part III – Additional Provisions concerning the Performance of Service Contracts**

### **ARTICLE 28 – OWNERSHIP OF THE RESULTS – INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS**

- 28.1 Any results or rights therein, including copyright and other intellectual or industrial property rights, obtained as a result of the performance of the Contract, are owned solely by the Office. All the rights are acquired by the Office from the moment the results are delivered by the Contractor and accepted by the Office. The payment of the price as set out in the Contract, or purchase order forms or specific contracts is deemed to include any fees payable to the Contractor in relation to the acquisition of ownership of rights by the Office including all forms of use of the results. The acquisition of ownership of rights by the Office under the Contract covers all territories worldwide.
- 28.2 The Office may use, publish, exploit, assign or transfer results and rights referred to in paragraph 1 as it sees fit, without geographical or other limitation, except where limitations are imposed by the existence of any industrial or intellectual property rights prior to the Contract being entered into. The Contractor must possess all rights, powers and licences that are needed to license the pre-existing rights on a royalty-free, non-exclusive and irrevocable basis to the Office. All the pre-existing rights must be licensed to the Office from the moment the results were delivered and accepted by the Office. The licensing of pre-existing rights to the Office under the Contract covers all territories worldwide and is valid for the whole duration of intellectual property rights protection.
- 28.3 When delivering the results, the Contractor must warrant that they are free of rights or claims from creators and third parties including in relation to pre-existing rights, for any use envisaged by the Office. This does not concern the moral rights of natural persons. The Contractor must establish to that effect a list of all pre-existing rights and rights of creators and third parties on the results of this Contract or parts thereof. This list must be provided no later than the date of delivery of the final results. In the result the Contractor shall clearly point out all quotations of existing textual works. The complete reference must include as appropriate: name of the author, title of the work, date and place of publication, date of creation, address of publication on internet, number, volume and other information which allows the origin to be easily identified.
- 28.4 Upon request by the Office, the Contractor must provide evidence of ownership or rights to use all the listed pre-existing rights and rights of third parties except for the rights owned by the Office. This evidence may refer, inter alia, to rights to: parts of other documents, images, graphs, tables, data, software, technical inventions, know-how etc. (delivered in paper, electronic or other form), IT development tools, routines, subroutines and/or other programs ("background technology"), concepts, designs, installations or pieces of art, data, source or background materials or any other parts of external origin. The evidence must include, as appropriate:

- a) the name and version number of a software product;
- b) the full identification of the work and its author, developer, creator, translator, data entry person, graphic designer, publisher, editor, photographer, producer;
- c) a copy of the licence to use the product or of the agreement granting the relevant rights to the Contractor or a reference to this licence;
- d) a copy of the agreement or extract from the employment contract granting the relevant rights to the Contractor where parts of the results were created by its personnel;
- e) the text of the disclaimer notice if any.

Provision of evidence does not release the Contractor from its responsibilities in case it is found that it does not hold the necessary rights, regardless of when and by whom this fact was revealed.

The Contractor hereby undertakes that it possesses the relevant rights, licences and powers indicated in Article 28.2 and those that would be needed to execute the transfer of the results and that it has paid or has verified payment of all due fees including fees due to collecting societies, related to the final results.

28.5 By delivering the results the Contractor warrants that the creators undertake not to oppose that their names be recalled when the results are presented to the public and confirms that the results can be divulged. Names of authors are recalled on request in the manner communicated by the Contractor to the Office. The Contractor must obtain the consent of creators regarding the granting of the relevant rights and be ready to provide documentary evidence upon request. If natural, recognisable persons appear in a result or their voice is recorded the Contractor must submit a statement of these persons (or of the persons exercising parental authority in case of minors) where they give their permission for the described use of their image or voice on request by the Office. This does not apply to persons whose permission is not required in line with the law of the country where photographs were taken, films shot or audio records made.

28.6 Should performance of the Contract involve the use of patents, trade-marks, industrial designs, copyrights or any other industrial or intellectual right belonging to third parties, the Contractor must indemnify the Office against any action for infringement which may be brought against it.

The Contractor must not indemnify the Office in cases where the action for infringement is the consequence of:

- the Office imposing the use of any industrial property rights indicated in the first sub-paragraph and belonging to a third party;
- use of the industrial property rights by the Office for a purpose other than that indicated in the Contract or contrary to the purposes specified in the Contract;
- an unjustified refusal from the Office of changes to the provisions of the Contract proposed by the Contractor to mitigate the risks of infringements of intellectual or industrial property rights.

The Office and the Contractor must inform each other of any information that could lead to an intellectual or industrial property right impeding performance of the Contract. At the first indication that an action has been brought by a third party, in particular the lodging of a claim, even after performance of the Contract, the party implicated must notify the other party without delay, whereupon both parties must act jointly and must exchange all information and evidence they may possess or obtain.

- 28.7 The Contractor must obtain from third parties involved in the performance of the Contract, including subcontractors, a commitment that they will comply with the obligations set out in this Article. A copy of these written undertakings must be provided to the Office, should it so request.

## **Part IV – Additional Provisions concerning the Performance of Works Contracts**

### **ARTICLE 29 – REPRESENTATION OF THE OFFICE**

The Office must appoint a representative to oversee the Contractor to ensure that all the stipulations and provisions contained in the contract documents are fully observed.

The Office must inform the Contractor of the name of its representative, and the name of person who will stand in for the representative in the event of the latter's absence, within 15 calendar days of the signature of the Contract.

The Office's representative is responsible in particular for:

- authorising the entry of the Contractor's staff to the Office's premises;
- monitoring the services provided by the Contractor under the Contract and verifying that the provisions of the Contract are adhered to;
- proposing alterations or amendments that may improve progress of the task in hand;
- checking and certifying the number of persons employed by the Contractor, and their qualifications, against the requirements of the Contract;
- indicating defects and failures in the performance of the Contract.

The Contractor must afford and must ensure that its staff afford due respect to the representatives of the Office, and must ensure that they have free access to the Contractor's work locations, all works areas and stores of materials to be used in the works, for their inspection.

The fact that the Office's representative performs supervisory duties, carries out inspections and verifications and issues provisions or stipulations does not release the Contractor from its own obligations or liabilities regarding the correct and full implementation of the Contract and does not release the Contractor from its obligations under the applicable laws, regulations and standards in force.

### **ARTICLE 30 – SUSPENSION OF CONTRACTUAL ACTIVITIES**

In the event that unforeseen circumstances temporarily prevent all or some of the contractual activities being performed, the Office may order suspension of those activities and their subsequent resumption as soon as the grounds for that suspension cease to exist.

If the Office orders the suspension of only part of the contractual activities, the Contractor must continue to perform the remaining activities and is not entitled to request compensation for being unable to perform all the contractual activities simultaneously.



## **ARTICLE 31 – PROHIBITION ON THE CONTRACTOR SUSPENDING, INTERRUPTING OR DELAYING CONTRACTUAL ACTIVITIES**

The Contractor may not, under any circumstances, take a unilateral decision to suspend, interrupt or delay performance of the contractual activities even in the event of disputes with the Office awaiting resolution.

A unilateral decision by the Contractor to suspend, interrupt or delay the contractual activities constitutes a failure to perform and may give rise to the immediate termination of the Contract on the grounds of breach of contract by the Contractor.